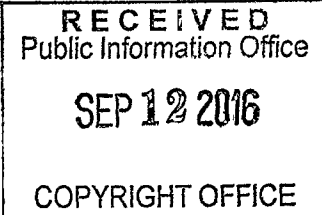


Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.



In the Matter of )

)  
Distribution of 2004, 2005, 2006, 2007,  
2008 and 2009 Cable Royalty Funds )

) Docket No. 2012-6 CRB CD ~~2004-2009~~  
(Phase II) (REMAND)

SEP 12 2016

Cable Royalty Board

In the Matter of )

)  
Distribution of 1999-2009 Satellite  
Royalty Funds )

) Docket No. 2012-7 CRB SD 1999-2009  
(Phase II) (REMAND)

**INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO THE**  
**MPAA'S MOTION TO STRIKE INDEPENDENT PRODUCER GROUP'S**  
**AMENDED DIRECT STATEMENT**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba Independent Producers Group ("IPG") hereby submits its opposition to the MPAA's *Motion to Strike Independent Producer Group's Amended Direct Statement*.

On August 22, 2016, IPG submitted its Direct Statement in this proceeding. In the aftermath thereof it was found that the calculations placed in the statement were incorrect. Accordingly, on August 31, 2016, IPG filed an Amended Direct Statement. Although the methodology propounded therein was not modified, the correct calculations were substituted for the incorrect calculations, including those for the Program Suppliers category. IPG opposes the motion for the obvious reason that IPG's original calculations were incorrect, and have simply been corrected in IPG's Amended Direct Statement.<sup>1</sup>

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<sup>1</sup> "No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law." 37 C.F.R. § 351.4(b)(3).

**A. THE DIFFERENCES BETWEEN IPG'S DIRECT STATEMENT AND AMENDED DIRECT STATEMENT WERE FEW AND OBVIOUS, AND WERE UNRELATED TO THE SUBMISSION OF A NEW DISTRIBUTION METHODOLOGY.**

Throughout the MPAA's motion, the MPAA repeatedly asserts that IPG's Amended Direct Statement submits a new distribution methodology. Such is not remotely the case. See generally, Decl. of Dr. Charles Cowan, **Exhibit A**. A quick comparison of IPG's Direct Statement and Amended Direct Statement reflects the differences therein, none of which relate to a revision of IPG's propounded distribution methodology. The aggregate of such differences are as follows:

- 1) The introductory portion of IPG's Direct Statement indicated that IPG was making claim for the figures that appear in the attached report authored by Dr. Charles Cowan. *See* IPG WDS at p. 2 ("IPG hereby makes claim to the percentage of royalties set forth in the attached report of Dr. Charles Cowan.").<sup>2</sup> By contrast, the introductory portion of IPG's Amended Direct Statement (which also attached the report of Dr. Cowan) simply *repeated* the specific figures that appear in Dr. Cowan's report. *See* IPG AWDS at pp. 2-4. No other revisions to IPG's introductory pleading were made.
- 2) Dr. Cowan's amended report remedies two typographical errors. The first erringly referred once to "IDC" rather than "IPG". *See* Cowan report at p.8, para. 34. The second, appearing in the same paragraph, erringly omitted a parentheses ["( )"] that otherwise appeared in a mathematical calculation identified by Dr. Cowan. *Id.*

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<sup>2</sup> The MPAA motion suggests that IPG Direct Statement violated CRB regulations by not specifically stating the percentages of royalties being claimed in its introductory portion, despite incorporating by reference the figures appearing in Dr. Cowan's attached report. *See* MPAA motion, fn. 1, *citing* 37 C.F.R. § 351.4(b)(3).

- 3) Dr. Cowan's amended report substituted the results of the correct calculations from Dr. Cowan's methodology. Cf. IPG WDS at pp. 9-12 *with* IPG AWDS at pp. 9-12. In connection therewith, it was additionally discovered that Dr. Cowan had incorrectly pasted the results of applying a prior IPG methodology, presented as "Alternative Estimates".<sup>3</sup> Specifically, while Dr. Cowan described his application of a prior IPG methodology modified to address the Judges' criticisms thereof, and submitted "Estimates of Relative Distributions for Devotional and Program Suppliers, Using Previous IPG Methods", the pasted tables only included the cable proceeding figures, and were further mislabeled as relating to the devotional programming category even though both SDC and MPAA percentages were identified. Dr. Cowan's amended report remedied this cut-and-paste error.<sup>4</sup>
- 4) Appendix 2 to Dr. Cowan's report adds an inconsequential observation about the regression formula that was utilized.<sup>5</sup>

Confusingly, and contradictory to its claim that IPG has presented a new distribution methodology, the MPAA also asserts that "IPG did not include its actual methodology and share allocations in its original written direct statement filed on August 22, 2016, and instead appears

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<sup>3</sup> Notably, the figures appearing as Alternative Estimates are not the percentages sought by IPG in either its Direct Statement or Amended Direct Statement, but reflect information that the Judges may find significant to their determination.

<sup>4</sup> IPG's counsel did not review or consider Dr. Cowan's report prior to its submission to expressly avoid any allegation that IPG had "straitjacketed" its witness, an allegation twice asserted by the Judges against IPG. Ironically, the testimony of both SDC and MPAA witnesses reflect a myriad of references indicating the involvement of SDC and MPAA counsel in the preparation of such reports.

<sup>5</sup> Appendix 2, at p. 21: "A similar result is found when the natural logarithm of Y is used as the dependent variable, except that changes are now expressed as proportional changes."

to have saved them for the IPG [Amended Direct Statement].” Motion at p.4. As best as IPG understands, the MPAA reference is to IPG simply repeating the figures appearing in Dr. Cowan’s attached report, rather than incorporating them by reference. See para. 1, above. Regardless, no discussion regarding any methodology exists in the introductory pleading that is part of either IPG’s Direct Statement or Amended Direct Statement, so under no circumstances has IPG “saved” its presentation of its methodology for its Amended Direct Statement. In fact, all methodological discussion and description appears unchanged in Dr. Cowan’s report.

**B. IPG’S AMENDED DIRECT STATEMENT WAS SUBMITTED PRIOR TO THE DEADLINE FOR THE SUBMISSION OF INITIAL DISCOVERY, AND THE MPAA HAS ALREADY PROPOUNDED DISCOVERY RELATING TO IPG’S AMENDED DIRECT STATEMENT. THE MPAA CAN IDENTIFY NO PREJUDICE.**

Despite the fact that the foregoing differences between IPG’s Direct Statement and Amended Direct Statement are fairly apparent, the MPAA nevertheless make much of the fact that IPG’s Amended Direct Statement was filed one day prior to the deadline for the submission of discovery upon IPG. The MPAA compares IPG’s amendment to “trial by ambush” for which the SDC’s 2000-2003 cable methodology was disallowed.

Obvious differences exist. First, the SDC methodology that was disallowed and characterized as “trial by ambush” was submitted twelve (12) months after the filing of direct statements, was propounded as part of the SDC’s rebuttal statement long after discovery had concluded, thereby precluding any opportunity for IPG to propound discovery relating to the SDC methodology. By contrast, IPG’s Amended Direct Statement was submitted a mere days after its Direct Statement, and even prior to the MPAA’s submission of initial discovery requests. Having been filed prior to the MPAA’s issuance of discovery, and certainly prior to IPG’s response to discovery, the MPAA is hard-pressed to articulate any prejudice. Further, the

MPAA neglects to mention that the MPAA's discovery requests actually sought the production of documents relating to the figures appearing in *both* IPG's original and amended direct statements, meaning that no prejudice can possibly inure to the MPAA.<sup>6</sup> See **Exhibit B**, at opening paragraph, and throughout. Moreover, if the MPAA believed that any prejudice would result from its inability to determine the differences between the IPG Direct Statement and Amended Direct Statement, such prejudice could have been avoided by the MPAA with a simple phone call to inquire as to such differences, or a request for additional time to prepare written discovery. Both requests would have been accommodated.

**C. IPG HAS COMPLIED WITH THE COPYRIGHT ROYALTY BOARD REGULATIONS.**

In its challenge to the IPG Amended Direct Statement, the MPAA cites to 37 C.F.R. § 351.4(c). Conveniently omitted, however, is reference to the immediately preceding provision, falling under a different subsection. As set forth therein:

"No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law."

37 C.F.R. § 351.4(b)(3).

As noted above, IPG has not submitted a revised methodology, but merely corrected its calculations under its submitted methodology, squarely placing such amendment or revision within the ambit of the regulation set forth above.

By contrast, the opening phrase of the provision cited by the MPAA reads: "A participant in a proceeding *may* amend a written direct statement *based on new information received during*

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<sup>6</sup> As a further exaggeration, the MPAA asserts that IPG's amendment of its claim "is an attempt to sandbag the other parties by impairing their ability to prepare and serve meaningful discovery requests." Obviously, the MPAA has not been "sandbagged" if IPG's revised claim was submitted *before* the MPAA submitted its discovery, and the MPAA *actually* submitted discovery requests relating to IPG's Amended Direct Statement.

*the discovery process . . .*”<sup>7</sup> 37 C.F.R. §351.4(c) (emphasis added). By its plain language, the provision is permissive, not restrictive, and recites the technical requirements for amended direct statements filed as a result of information “received during the discovery process”. That is, the provision does not assert that revision or amendment to a claim amount is *precluded* unless based on “information received during the discovery process”, which would stand in stark contradiction of Section 351.4(b)(3) where “amendment” is merely a revision of the claimed percentage.

IPG did not construe the requirements set forth in §351.4(c) as applicable to “revisions” of a claim pursuant to §351.4(b)(3) and, as noted, such claim revisions fall under a different subsection of the regulations. For this reason, IPG could have just as validly submitted a pleading entitled “Revision of Claims” rather than “Amended Direct Statement”, further demonstrating the form over substance challenge brought by the MPAA. Regardless, if the §351.4(c) requirements were to apply to IPG’s revised claim percentages, IPG complied with all of them other than providing a description of the nominal textual differences between IPG’s Direct Statement and Amended Direct Statement, which IPG has provided herein. See *supra*. Additionally, IPG technically received its information, i.e., knowledge of its miscalculation, “during the discovery process”. Consequently, even if the requirements set forth in §351.4(c) were to apply to “revisions” of a claim pursuant to §351.4(b)(3), IPG has complied. Again, the MPAA fail to articulate what prejudice it has suffered.

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<sup>7</sup> IPG has construed this language to even allow the submission of a new dist

## CONCLUSION

For the foregoing reasons, the MPAA's *Motion to Strike Independent Producer Group's Amended Direct Statement* should be denied in its entirety.

Respectfully submitted,

Dated: September 12, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Brian D. Boydston, Esq.  
California State Bar No. 155614

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Los Angeles, California 90024  
Telephone: (213)624-1996  
Facsimile: (213)624-9073  
Email: brianb@ix.netcom.com

Attorneys for Independent Producers Group

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of September, 2016, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

\_\_\_\_\_/s/\_\_\_\_\_  
Brian D. Boydston

### **MPAA REPRESENTED PROGRAM SUPPLIERS**

Gregory O. Olaniran, Esq.  
Lucy Holmes Plovnick Esq.  
Mitchell, Silberberg & Knupp LLP  
1818 N Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20036

### **SETTLING DEVOTIONAL CLAIMANTS:**

Clifford M. Harrington  
Matthew MacLean  
Pillsbury, Winthrop, et al.  
P.O. Box 57197  
Washington, D.C. 20036-9997



# **EXHIBIT A**

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

In the Matter of	)	
	)	
Distribution of 2004, 2005, 2006, 2007,	)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds	)	(Phase II) (REMAND)
	)	
 In the Matter of	)	
	)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds	)	(Phase II) (REMAND)
	)	

**DECLARATION OF DR. CHARLES COWAN**

I, CHARLES COWAN, swear under penalty of perjury, that the following is true and correct:

1. I am over twenty-one years of age, am of sound mind and suffer from no legal disabilities. I am fully competent to testify to the matters set forth in this declaration. I have personal knowledge of all the facts stated herein and am in all respects qualified to assert the same. The contents of this declaration are true and correct.

2. In the Motion to Strike, the Motion Picture Association of America ("MPAA") asserts that:

*"The IPG ADS also includes an "amended" version of Dr. Cowan's expert report that presents modified allocation formulas (see IPG ADS at 8); completely new allocation results reported in Tables 1-4 applying these modified formulas (see IPG ADS at 9-10); radically different "alternative" allocation results in Tables 5-6 (see IPG ADS at 11-12); and brand new "alternative" allocation results in Tables 7-8—two tables that were not even present in IPG's August 22, 2016 written direct statement (see IPG ADS at 12)."*

\* \* \*

*"[T]he IPG ADS goes well beyond a correction, and presents new methodologies and allocation share proposals that were not included in IPG's August 22, 2016 written direct statement."*

3. The MPAA's conclusion is incorrect - what I submitted was not a "new methodology", and the revised allocation share proposals are the results of a correction to the data made in the one week between the initial submission and the subsequent submission.

4. The methodology I used was well explained in the first submission, dated August 22. It is a methodology that has never been presented to the court, yet which directly responds to the court's desire to base the allocations on the marginal value of programs. This methodology is a standard application of regression theory, where the coefficients of variables included in the regression are interpreted as the hedonic marginal values of programs offered by each of the parties in this proceeding.

5. The regression method I used in the later calculations is exactly the same. The variables I used are exactly the same. Subscriptions on the left hand side of the equation, the number of programs offered by each of the parties on the right hand side, plus controls for time in years and for the stations offering the programs.

6. As I noted in the appendix to my report, the coefficients in the regression now become the percentage change in subscriptions due to a unit change in the number of programs offered by a party in the proceeding. This is an application of regression in econometrics that has been in use since the middle of the last century - for over 50 years. Accordingly, since the regression method being used, the variables being used, and the data sources being used are exactly the same, the assertion that different discovery requests are required is misleading to the court, and discovery relating to the methodology would be unchanged under either submission.

7. The MPAA falsely makes the claim in the motion to strike that "IPG did not include its actual methodology and share allocations in its original written direct statement filed on August 22, 2016, and instead appears to have saved them for the IPG ADS." This is also incorrect and grossly overreaches. The text of the two submissions, dated August 22 and August 30, are identical in terms of explaining that a regression was being used, the variables included in the regression, and the interpretation of the coefficients. The changes between the two texts are nominal, remedy typographical errors, and add a sentence in Appendix 2 that is an inconsequential observation about the regression formula.

8. The August 22nd submission included all the descriptions, mathematics, and rationale that was needed by any party to interpret what was being done, and discovery on the initial and subsequent submission would be form wise and substantively identical. Stating that the submitted methodology "was saved for the IPG ADS" is simply incorrect - an overstatement that can be readily evaluated by the court by simply holding up and comparing the two texts.

9. The more relevant question is why were there changes to the allocations and the data. The answer is simple - after preparation of the August 22nd report, IPG's counsel immediately inquired about the produced results, and during the course of the next week I discovered errors in the earlier processing of the data. Consequently, in the tabulations and analyses I performed for the August 22nd report, inconsistencies existed that called into question the produced results, which required remedy.

I hereby declare under the penalty of perjury that the foregoing is true and correct.

DATED: September 9, 2016

By: \_\_\_\_\_



Dr. Charles Cowan

# **EXHIBIT B**



**MITCHELL SILBERBERG & KNUPP LLP**  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Gregory O. Olaniran  
A Professional Corporation  
(202) 355-7917 Phone  
(202) 355-7887 Fax  
goo@msk.com

September 1, 2016

**VIA E-MAIL AND U.S. MAIL**

Brian D. Boydston  
Pick & Boydston LLP  
10786 Le Conte Avenue  
Los Angeles, CA 90024

**Re: Initial Requests for Underlying Documents Related To Independent Producers Group's Written Direct Statement, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II)**

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Dear Brian:

In connection with the Written Direct Statement of Independent Producers Group ("IPG") filed on August 22, 2016 in the referenced proceeding, MPAA hereby submits the following discovery requests. Without conceding the propriety of IPG's Amended Written Direct Statement filed August 31, 2016, MPAA also includes at the end a section of additional discovery requests related to that filing. The materials sought in this letter constitute our initial discovery requests and may be supplemented.

In accordance with the Copyright Royalty Judges' August 16, 2016 Order adopting the parties' proposed procedural schedule for discovery, your responses to these requests are due no later than September 12, 2016. Production of responsive documents is due no later than September 15, 2016.

### **INSTRUCTIONS**

Please repeat each of the requests below in your response. Please provide a separate written response to each request. If you object to any request, state each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to a portion of the request that is not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege.

The term "underlying" has the same meaning as in 37 C.F.R. § 351.6, and includes, without limitation, all documents upon which the witness relied in making his or her statement and all documents which verify bottom-line numbers.

The term "document" means and includes all materials comprehended within the description of the term "document" contained in Rule 34 of the Federal Rules of Civil Procedure and means the original and all duplicates of a writing or recording, as those terms are defined by Rule 1001 of the Federal Rules of Evidence, including, without limitation, all written, recorded,



graphic or photographic matter, however produced or reproduced, of every kind and description in your actual or constructive possession, custody, care or control pertaining in any manner to the subject matter indicated. The term "document" also refers to electronic records in the form of electronic mail, computer files and the like without regard to whether the electronic record exists in printed form.

Responsive documents containing underlying data, quantitative analyses, statistical analyses, methodologies, calculations, or any other analyses **must be provided, separately, for each of the 2004, 2005, 2006, 2007, 2008, and 2009 cable royalty funds ("2004-2009 Cable Funds") and 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 satellite royalty funds ("2000-2009 Satellite Funds"), and must identify the particular royalty year(s) associated with the document.**

## DISCOVERY REQUESTS

### Expert Report Of Charles D. Cowan, Ph.D.

1. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 1, of Dr. Cowan's expert report ("Expert Report") that he "has been retained by Pick & Boydston, LLP to develop a methodology for estimating values for programs\sets of programs for different third party television show providers for use by the Copyright Royalty Board in its determination of allocation of royalties." This request includes, but is not limited to, any agreement or other document engaging Dr. Cowan, and any correspondence or other documents provided to Dr. Cowan by IPG in connection with his engagement for work in this case.
2. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 1, of the Expert Report that he "was asked to review past methodologies employed and data provided to determine their utility." This request includes, but is not limited to, all documents and data Dr. Cowan was asked to review, and any notes or analyses prepared by Dr. Cowan during his review of such materials.
3. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 2, of the Expert Report that he "derived a set of estimates based on [his] analysis of data [he] was provided" and that a set of "assumptions underlie the estimates." This request includes, but is not limited to, all documents related to Dr. Cowan's derivation of estimates, including all program files and data necessary to replicate such estimates, the source(s) of such data, and documents identifying all "assumptions" Dr. Cowan relied on in formulating his estimates.
4. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 3, of the Expert Report that he "developed a methodology that is directly responsive to what is my understanding of the valuation

required for these analyses, similar to methods I have used in the past.” This request includes, but is not limited to, all documents related to the development of Dr. Cowan’s methodology, including any references consulted, any past projects considered, and any economic theories on which the methodology is based.

5. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 3, of the Expert Report that he “implemented this methodology to perform these calculations.” This request includes, but is not limited to, all documents related to the implementation of Dr. Cowan’s methodology, including all program files and data necessary to replicate Dr. Cowan’s methodology and calculations.
6. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 4, of the Expert Report that he has “40 years of research and study in the areas of statistics, economics, and their application to business programs.”
7. Provide all nonprivileged underlying documents and source materials related to the assertion on page 1, in paragraph 4, of the Expert Report that his company supports “Federal organizations needing economic and financial analysis to pursue their missions.” This request includes, but is not limited to, documents identifying the federal organizations referenced by Dr. Cowan.
8. Provide all nonprivileged underlying documents and source materials related to the assertion on page 2, in paragraph 6, of the Expert Report that he has “read some of the past rulings by the Judges, some of the past submissions by Plaintiffs and Defendants, and some economic literature on the topic of allocations of royalties.” This request includes, but is not limited to, documents identifying the particular decision(s) by the Copyright Royalty Judges that Dr. Cowan references in paragraph 6, and copies of all documents Dr. Cowan references in this statement.
9. Provide all nonprivileged underlying documents and source materials related to the assertion on page 2, in paragraph 7, of the Expert Report that “[t]he utility of Shapley Values for this situation would be the construction of relative marginal values; these would be used in making a decision as to how to allocate a fixed pot of money.” This request includes copies of all documents Dr. Cowan references or relied on in formulating this statement.
10. Provide all nonprivileged underlying documents and source materials related to the assertion on page 2, in paragraph 8, of the Expert Report that “no amount of expenditure would make it possible to derive the relative marginal values.”
11. Provide all nonprivileged underlying documents and source materials related to the assertion on page 2, in paragraph 8, of the Expert Report that “stations that are rebroadcast are obtained as a portfolio of shows that are offered by a particular station



without separate payments made by program, so that you would know the cost associated with each program.”

12. Provide all nonprivileged underlying documents and source materials related to the assertion on page 2, in paragraph 8, of the Expert Report that “a particular station or call-sign is acquired for a fixed payment or licensing fee, but there is no separate determination made for the portion of the licensing fee for a particular program.”
13. Provide all nonprivileged underlying documents and source materials related to the assertion on page 2, in paragraph 9, of the Expert Report that “the key question to be answered is: what is the relative marginal value of IPG shows relative to SDC shows (devotional programming category) and MPAA shows (program suppliers category).”
14. Provide all nonprivileged underlying documents and source materials related to the assertion on pages 2-3, in paragraph 9, of the Expert Report that “[i]f one can determine the marginal value of IPG shows and the marginal value of SDC and MPAA shows, the relative marginal value of each would be a proportion of the overall marginal value of IPG, SDC, and MPAA shows combined (in their respective categories).”
15. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 10, of the Expert Report that “[t]his is a frequent problem in statistics.”
16. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 10, of the Expert Report that he “adopted a commonly used method to do exactly what was requested in this litigation - estimation of values that are the marginal value affiliated with each set of programs, IPG, SDC, or MPAA.”
17. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 10, of the Expert Report that he “present[s] in this report a set of estimates that relies on a calculation that the Judges have accepted in past hearings.” This request includes, but is not limited to, documents identifying the specific “calculation,” the particular “past hearings,” and copies of any orders or decisions by the Copyright Royalty Judges that Dr. Cowan is referencing in this statement.
18. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 10, of the Expert Report that “[t]he cable data upon which [he] relied was data from Cable Data Corporation summarizing the number of distant cable subscribers on a station-by-station basis, and broadcast data secured from Tribune Media based on a stratified random sample conducted by Dr. Laura Robinson.” This request includes, but is not limited to, all Cable Data Corporation and Tribune Media data referenced by Dr. Cowan, and all documents and data related to the “stratified random sample conducted by Dr. Laura Robinson.”

19. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 10, of the Expert Report that "[t]he satellite data upon which [he] relied was data summarizing the number of distant satellite subscribers on a station-by-station basis, and broadcast data secured from Tribune Media based on a non-random sample that includes such stations covering approximately 99.5% of the distant satellite subscribers." This request includes, but is not limited to, all satellite subscriber data and Tribune Media data referenced by Dr. Cowan, and all documents and data related to the "non-random sample" referenced by Dr. Cowan.
20. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 12, of the Expert Report that "[t]he economic theory is that a Cable or Satellite Operator (CSO) is paying a fee as a royalty for rebroadcasting a station."
21. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 12, of the Expert Report that "[e]ach station in the offering has a set of titles, some of which are offered more than once, and some of which will be offered at different times of the day, different days of the week, and so on."
22. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 12, of the Expert Report that "[t]he point is, the CSO is paying a fee for rebroadcasting a station that has a collection of titles, and for that station a title is either present or absent."
23. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 12, of the Expert Report that "[t]he CSO makes a decision to rebroadcast the station to induce subscribers to sign up for their services."
24. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 12, of the Expert Report that "[t]he CSO is obtaining a license to rebroadcast the station - a single fee for a bundle of programs."
25. Provide all nonprivileged underlying documents and source materials related to the assertion on page 3, in paragraph 12, of the Expert Report that "[t]here is only a single licensing fee paid for the station as a large bucket, with no indication to the outside world about how the CSO values a particular program within the offerings of the station, or even whether the CSO considers individual programs in the decision to rebroadcast a station."
26. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 13, of the Expert Report that "[a] second part to the economic theory is that a CSO can decide to pay or not pay for a station."
27. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 13, of the Expert Report that "[i]f the fee is too high,

the CSO can simply decide to not offer the station based on what potential subscribers are being brought to the CSO.”

28. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 13, of the Expert Report that “there is a mechanism that the CSO has to be following to determine the value of the station.”
29. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 13, of the Expert Report that “[t]he mechanism is unknown, which is why we need to estimate what the values are for programs in the bundle.”
30. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 13, of the Expert Report that “[t]his is a fair market transaction in the market where the CSO obtains packages of programs with the ability to accept or reject based on the pricing and the expected value to the CSO.”
31. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 14, of the Expert Report that “[a] third part of the economic theory is that, while there is likely some variation in value from CSO to CSO about the value of different titles, the value cannot vary in an extreme manner, since that would create an extreme demand for some stations that are offering the popular titles, and thus the title would be omnipresent.”
32. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 15, of the Expert Report that “the CSO earns its revenues by signing on subscribers.”
33. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 15, of the Expert Report that “[a] subscriber pays for the cable or satellite service but pays a single fee for all channels\stations the subscriber receives.”
34. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 15, of the Expert Report that “[t]here is no fee charged by show or by viewing, with the exception of pay-per-view, which does not apply to offerings of either IPG, SDC, or MPAA.”
35. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 16, of the Expert Report that “the presence of a title in a station that is being rebroadcast is used to calculate the marginal value of that title when it is part of a station's offering.”
36. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 16, of the Expert Report that “[t]he value is to the CSO who is paying the royalty.”

37. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 16, of the Expert Report that “[t]he CSO is indifferent to viewership of a particular program since the station can decide to no longer offer the program, can decide to move the program to a different time slot, or make other changes that would impact the offering of the program - the CSO has no input to a programming decision by a station or a set of stations.”
38. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 16, of the Expert Report that “[i]f viewership of a particular program were important to the CSO, the CSO would put terms in the licensing agreement to allow it to have a say in whether the time or the offering of a program were to be changed.”
39. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 16, of the Expert Report that “[t]his would be impractical when many CSOs rebroadcast a station, each with their own interests.”
40. Provide all nonprivileged underlying documents and source materials related to the assertion on page 4, in paragraph 16, of the Expert Report that “viewership cannot be important to the decisions of the CSO; it’s only the ability to obtain more subscribers that is relevant to the decision by the CSO to pay the licensing fees.”
41. Provide all nonprivileged underlying documents and source materials related to the assertion on page 5, in paragraph 17, of the Expert Report describing two “parallels from previous work [he’s] done in a similar vein” related to “portfolio theory” and “the automotive industry.” This request includes, but is not limited to, documents describing the “previous work” that Dr. Cowan references, the economic or statistical theories underlying such work, and documents underlying Dr. Cowan’s conclusion that “parallels” exist between such work and this proceeding.
42. Provide all nonprivileged underlying documents and source materials related to the assertions on page 5, in paragraph 18, of the Expert Report describing the business practices of the FDIC.
43. Provide all nonprivileged underlying documents and source materials related to the assertions on page 5, in paragraph 19, of the Expert Report that “[u]nder Federal law, the FDIC must allocate the proceeds of a sale of assets back to the individual receiverships (the remnants of the failed banks) so that the proceeds can be distributed to creditors. Even though the pool is sold for a single price, a value has to be placed on each loan\asset in the pool so that there is a proper dispersal of proceeds back to the individual banks.”
44. Provide all nonprivileged underlying documents and source materials related to the assertions on page 5, in paragraph 20, of the Expert Report that “[a] pool that is sold is composed of, for example, residential mortgages, commercial mortgages, commercial

loans, real estate, construction loans, and other types of assets. There may be hundreds of such assets, with different levels of value.”

45. Provide all nonprivileged underlying documents and source materials related to the assertions on page 5, in paragraph 20, of the Expert Report that “commercial mortgages are more valuable than commercial loans because commercial mortgages are secured by underlying collateral (the building) whereas the commercial loans typically are not. However, there is no way to determine exactly how much more valuable one class of loans is than another when only one price is obtained for the entire pool that may have over 1,000 assets.”
46. Provide all nonprivileged underlying documents and source materials related to the assertions on page 5, in paragraph 21, of the Expert Report that “[t]he solution is to use sales of multiple pools, where the mix of loans in each pool differs from pool to pool, as do the prices. By using regression theory (explained below), the marginal value of a class of assets within a pool (say, construction loans) can be computed by determining how the return on the pool varies after holding constant the mix of loans across the pools.”
47. Provide all nonprivileged underlying documents and source materials related to the assertions on page 6, in paragraph 22, of the Expert Report that “[t]here are multiple returns (subscribers) obtained when licenses are obtained to broadcast stations. Each station has a mix of IPG and SDC programs (devotional programming), or mix of IPG and MPAA programs (program suppliers programming); each station has distant subscribers. If all distant subscribers that are obtained for each station are the return, the number of subscribers obtained will vary by a number of factors, including the number of IPG and SDC programs, and the number of IPG and MPAA programs.”
48. Provide all nonprivileged underlying documents and source materials related to the assertions on page 6, in paragraph 23, of the Expert Report describing the business practices of the Fiat Automotive in Italy. This request includes, but is not limited to, Dr. Cowan’s report on the work he conducted for Fiat Automotive.
49. Provide all nonprivileged underlying documents and source materials related to the assertions on page 6, in paragraph 24, of the Expert Report that “[e]ach buyer paid a single price for a car with multiple such characteristics. But the car is a bundle of characteristics, not simply a box with four wheels. The analysis enabled Fiat to consider which characteristics were most attractive to buyers (higher marginal values) to increase volume of sales and also how to price cars competitively, in some cases increasing the price for cars with more desirable characteristics.”
50. Provide all nonprivileged underlying documents and source materials related to the assertions on page 6, in paragraph 25, of the Expert Report that “the sale is for a bundle of characteristics, but a single price is paid, in exactly the same way that a single payment is made by a cable or satellite operator to entice more households to subscribe, but the station acquisition involves only a single licensing fee.”



51. Provide all nonprivileged underlying documents and source materials related to the following assertions on pages 6-7, in paragraph 26, of the Expert Report:

I show up at an airport and rent a car. I don't know which car I'm going to get. I don't know the type - make and model - of car I'm going to get. The rental car company might know which car I will get, but the rental car company doesn't know which features of the car I may or may not use. The rental car company doesn't know how much I am going to drive the car in terms of number of miles. The rental car company and I both agree on a price, offered in a fair market, in competition with other rental car companies. The rental car company makes money; I get a car. Usage of features is immaterial to both of us. That doesn't mean the features have no value since they comprise a piece of the whole - it just means that usage of the features is not part of the calculus of demand and supply. In the same way, viewing of the IPG, SDC, or MPAA programs has no relevancy.

52. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 7, in paragraph 27, of the Expert Report that "subscriber data for the stations and programs offered can be combined in a structure that permits the computation of the marginal returns ascribed to particular classes of programs (IPG or SDC) based on factors that relate to the value of a station and a program class."
53. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 7, in paragraph 28, of the Expert Report that "there is a well known relationship used to obtain the marginal value of an item that is based on linear regression. For any general linear regression, one can compute the rate of change in the dependent variable relative to a unit change in a single predictor variable. The change in the dependent variable that results from a change in a single factor is the marginal rate of change."
54. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 7, in paragraph 29, of the Expert Report that "[i]n a regression, slope coefficients each measure the rate of change in the dependent variable relative to a change in a particular descriptor variable, holding all other variables constant. In other words, I remove the impact of any other variable and find only the change in the dependent variable when I change the specific independent variable associated with that regression coefficient and no other variable."
55. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 7, in paragraph 29, of the Expert Report that "[i]n economics, this is the marginal return if the dependent variable in the regression is measuring a return and the independent variables measure inputs to production."
56. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 7, in paragraph 30, of the Expert Report that "[i]n the

voluminous data provided to me, I have millions of records for every program call sign (station) and year, the number of 'distant subscribers' for cable and subscribers for satellite, the number of IPG programs broadcast in a year by that station and the number of SDC and MPAA programs broadcast in a year by that station, and some other information about other broadcasts." This request includes, but is not limited to, all of the documents and data that IPG provided to Dr. Cowan for review in connection with his analysis.

57. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 8, in paragraph 31, of the Expert Report: "I aggregated information to obtain records by call sign and year with the number of subscribers for satellite, or number of distant subscribers for cable and the number of devotional IPG programs offered, the number of SDC programs offered, the number of program supplier IPG programs offered, the number of program supplier MPAA programs offered, and indicator variables for call signs with no devotional IPG programs, no program supplier IPG programs, no devotional SDC programs, or no program supplier MPAA programs."
58. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 8, in paragraph 31, of the Expert Report that "an indicator variable is a zero or one depending on whether there are no programs offered or there are programs offered."
59. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 8, in paragraph 32, of the Expert Report describing his "two regressions" run on a "reduced data set." This request includes, but is not limited to, all documents and data comprising the "reduced data set" described by Dr. Cowan; all documents and data underlying the creation of the "reduced data set;" and all documents, data, formulas, code, and program files necessary to replicate and run the "two regressions" described by Dr. Cowan.
60. Provide all nonprivileged underlying documents and source materials related to the formulas reported on page 8, in paragraph 32, of the Expert Report. This request includes, but is not limited to, all references or source(s) on which Dr. Cowan relied to develop his formulas, all documents and data underlying the application of the formulas described by Dr. Cowan, all documents, data, formulas, code, and all program files necessary to replicate Dr. Cowan's application of those formulas in this proceeding.
61. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 8, in paragraph 33, of the Expert Report that "if one takes the partial derivative of Subscribers with respect to "devotional", the coefficients "e" and "t" give the marginal returns for offering devotional programs from either source in terms of attracting more subscribers."
62. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 8, in paragraph 34, of the Expert Report that "[t]o obtain the relative number of subscribers that would be obtained under either offering, for the programs offered, I create a summary of what was gained by [IPG] relative to what was gained by

SDC, relying on the shows they offered and the number of additional subscribers that resulted from their shows.” This request includes, but is not limited to, all documents and data comprising the “summary” described by Dr. Cowan; all documents and data underlying the creation of the “summary;” and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan’s calculations of the “relative number of subscribers.”

63. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 9, in paragraph 35, of the Expert Report that “[e]quations (2) and (3) give the additional number of subscribers that one would expect if when stations offer IPG devotional programs, in (2), and the additional number of subscribers that one would expect when stations offered SDC devotional programs, in (3). Only “e” and “f” measure a change in the number of subscribers, so (2) and (3) are the marginal returns in the total number of subscribers if one offers a set number of programs, either IPG or SDC.” This request includes, but is not limited to, all documents and data underlying the “equations” described by Dr. Cowan, and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan’s calculations.
64. Provide all nonprivileged underlying documents and source materials related to the following assertions on page 9, in paragraph 36, of the Expert Report that “[e]xactly the same methods are used for Cable and for Satellite (except that cable uses distant subscribers). Exactly the same methods are used for Program Supplier comparisons, except the relevant coefficients in equation (1) are “g” and “h”. This request includes, but is not limited to, all documents and data underlying the “methods” described by Dr. Cowan, and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan’s calculations.
65. Provide all nonprivileged underlying documents and source materials related to the assertion on page 9, in paragraph 36, of the Expert Report that “[d]etails of the regressions are offered in the back up materials to this report, where coefficients for all variables in each regression are summarized.” This request includes, but is not limited to, all the “back up materials” referenced by Dr. Cowan.
66. Provide all nonprivileged underlying documents and source materials related to the assertion on page 9, in paragraph 37, of the Expert Report that “[f]ollowing the paradigm described in the previous section, for the devotional programs, I obtained two tables, one for cable for distant subscribers and one for satellite for all subscribers. In the same way, I obtained two tables for the program supplier comparisons.” This request includes, but is not limited to, all documents and data underlying application of the paradigm described by Dr. Cowan, and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan’s calculations.
67. Provide all nonprivileged underlying documents and source materials related to the assertion on page 9, in paragraph 38, of the Expert Report that “[f]or cable, there are few differences in the “value” of IPG versus SDC offerings when predicting the Distant Subscribers.”



68. Provide all nonprivileged underlying documents and source materials related to the figures appearing in Tables 1-4 on pages 9-10 of the Expert Report. This request includes, but is not limited to, all documents and data underlying the figures reported by Dr. Cowan in Tables 1-4, and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations.
69. Provide all nonprivileged underlying documents and source materials related to the assertion on page 11, in paragraph 40, of the Expert Report that "[a]s part of my assignment, I was asked to consider the computations that IPG has performed in the past, but modified to address criticisms levied by the Judges to such computations, and to provide the results of these computations as alternatives. The methodology employed is similar to that previously presented by IPG in the 2000-2003 cable proceedings (Phase II), however excluding a Time Period Weight Factor, and utilizing broadcast data taken from a stratified random sampling. Prior decisions of the Judges specifically criticized IPG's reliance on a Time Period Weight Factor, criticized IPG's reliance on a non-random sample, and criticized the presentation of such data by a non-expert witness." This request includes, but is not limited to, documents identifying the "computations IPG has performed in the past" that were utilized by Dr. Cowan; documents describing how those computations were "modified" by Dr. Cowan; and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's computations.
70. Provide all nonprivileged underlying documents and source materials related to the assertion on page 11, in paragraph 41, of the Expert Report that "[i]n my computations, I use broadcast hours for programs as a measure of volume. 'Broadcast hours' is offered as an alternative measure of value as the CSO recognizes that some titles are broadcast more frequently than others. However, this captures an alternative aspect of value not addressed above."
71. Provide all nonprivileged underlying documents and source materials related to the assertion on page 11, in paragraph 41, of the Expert Report that "[t]hese calculations have been accepted by the court in previous cases, so are repeated here." This request includes, but is not limited to, documents supporting Dr. Cowan's statement that certain calculations "have been accepted by the court in previous cases" and identifying what "court" Dr. Cowan is referencing in his statement.
72. Provide all nonprivileged underlying documents and source materials related to the assertion on page 11, in paragraph 41, of the Expert Report that "[t]hese calculations are averages used to obtain allocations, not marginal values used for this purpose."
73. Provide all nonprivileged underlying documents and source materials related to the figures appearing in Tables 5-6 on page 12 of the Expert Report. This request includes, but is not limited to, all documents and data underlying the figures reported by Dr. Cowan in Tables 5-6, and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations.

74. Provide all nonprivileged underlying documents and source materials related to the equations appearing Appendix 2 on page 21 of the Expert Report. This request includes, but is not limited to, all documents and data underlying the equations reported by Dr. Cowan in Appendix 2, and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations using the equations reported in Appendix 2.
75. Provide copies of all the source materials on "Marginal Return and measurement using regression methods" referenced in Appendix 2, in footnotes 1-5 (*see* page 21 of the Expert Report).
76. To the extent not sought by the foregoing requests, provide all other nonprivileged documents (whether in electronic format or hardcopy) underlying the Expert Report, including, but not limited to, notes, research materials, calculations, workpapers, spreadsheets, data files, program files, code, and correspondence.

#### **Amended Expert Report Of Charles D. Cowan, Ph.D.**

77. Provide all nonprivileged underlying documents and source materials related to the revised formulas appearing on page 8 of the Amended Expert Report. This request includes, but is not limited to, documents explaining the changes to Dr. Cowan's formulas, all references or source(s) on which Dr. Cowan relied to develop his formulas; all documents and data underlying the application of the formulas described by Dr. Cowan; and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's application of those formulas in this proceeding.
78. Provide all nonprivileged underlying documents and source materials related to the figures appearing in Table 1 on page 9 of the Amended Expert Report. This request includes, but is not limited to, documents explaining the changes to Dr. Cowan's tables, all documents and data underlying the figures reported by Dr. Cowan in Table 1 and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations.
79. Provide all nonprivileged underlying documents and source materials related to the figures appearing in Tables 2-4 on page 10 of the Amended Expert Report. This request includes, but is not limited to, documents explaining the changes to Dr. Cowan's tables; documents and data underlying the figures reported by Dr. Cowan in Tables 2-4; and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations.
80. Provide all nonprivileged underlying documents and source materials related to the figures appearing in Tables 5-6 on pages 11-12 of the Amended Expert Report. This request includes, but is not limited to, documents explaining the changes to Dr. Cowan's tables; documents and data underlying the figures reported by Dr. Cowan in Tables 5-6;



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and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations.

81. Provide all nonprivileged underlying documents and source materials related to the figures appearing in new Tables 7-8 on page 12 of the Amended Expert Report. This request includes, but is not limited to, documents explaining why Dr. Cowan added these new tables; all documents and data underlying the figures reported by Dr. Cowan in Tables 5-6; and all documents, data, formulas, code, and program files necessary to replicate Dr. Cowan's calculations.
82. To the extent not sought by the foregoing requests, provide all other nonprivileged documents (whether in electronic format or hardcopy) underlying the Amended Expert Report, including, but not limited to, notes, research materials, calculations, workpapers, spreadsheets, data files, program files, code, and correspondence.
83. Please provide a document identifying with specificity all of the differences between IPG's Written Direct Statement and its Amended Written Direct Statement, and nonprivileged documents underlying all such differences.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory O. Olaniran', with a long horizontal flourish extending to the right.

Gregory O. Olaniran  
A Professional Corporation of  
MITCHELL SILBERBERG & KNUPP LLP

GOO/pxt